



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2021-0582]

RIN 1625-AA08

### Notice of Proposed Rule Making; Atlantic Ocean, Key West, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary special local regulation for the RWO Offshore World Championship on November 10, 12 and 14, 2021. This action is necessary to ensure safety of life on navigable waters on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance in Key West, FL. This proposed rulemaking would prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area without permission from the Captain of the Port Key West or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0582 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Ensign Vera Max, Sector Key West Waterways Management Division, Coast Guard; telephone (305) 292-8768, email SKWWaterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On May 7, 2021, Race World Offshore notified the Coast Guard that it will be conducting a high speed boat race from 9:30 a.m. to 4:30 p.m. on November 10, 12, and 14, 2021. Approximately 50 participants and 200 spectator craft will attend the event, which will take place in the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance in Key West, FL. The Captain of the Port Key West has determined the potential hazards associated with the high speed boat race would be a safety concern for the participants, participant vessels, and the general public.

The purpose of this rulemaking is to protect event participants, spectators, and vessels on the navigable waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for “good cause found and

published with the rule.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because it is impracticable to provide a 30-day comment period because we must establish this safety zone by November 10, 2021. A 15-day comment period would allow the Coast Guard to provide for public notice and comment, but also update the proposed regulation soon enough that the length of the notice and comment period does not compromise safety.

### **III. Discussion of Proposed Rule**

The COTP Key West proposes to establish a temporary special local regulation from 9:30 a.m. until 4:30 p.m. each day on November 10, 12, and 14, 2021. The proposed special local regulation would consist of two regulated areas: (1) a race and safety buffer area and (2) a spectator area. These areas would prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the race area or buffer zone and prohibits vessels from transiting at speeds that cause wake within the spectator area, unless authorized by the Captain of the Port Key West or a designated representative. The special local regulation would cover all navigable waters in the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, duration, and time-of-day of the regulated area. Although persons and vessels may not enter, transit through, anchor in, or remain within the area without authorization from the COTP or a designated representative, they will be able to safely transit around the area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the area, and the rule would allow vessels to seek permission to enter the area between race heats.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary special local regulation for a 7 hour duration on 3 days that would prohibit entry into the race area or buffer zone, and prohibit vessels from transiting at speeds that cause wake within the spectator area. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

#### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add a temporary § 100.T799-0582 to read as follows:

**§ 100.T799-0582 Special Local Regulation; RWO World Championship, Key West, FL.**

**(a) Locations.** The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

**(1) Race and Safety Buffer Area.** Waters of the Atlantic Ocean of Key West, FL that are encompassed within the following points: starting at Point 1 in position 24°32.506'N, 81°49.984'W; thence southwest to Point 2 in position 24°32.455'N, 81°49.040'W; thence northwest to Point 3 in position 24°32.559'N, 81°49.584'W; thence northwest to Point 4 in position 24°32.608'N, 81°49.628'W; thence northwest to Point 5 in position 24°33.095'N, 81°49.265'W; thence northeast to Point 6 in position 24°33.518'N, 81°48.902'W; thence northeast to Point 7 in position 24°33.908'N, 81°48.448'W; thence east to Point 8 in position 24°33.898'N, 81°48.364'W; thence southeast back to origin.

**(2) Spectator Area.** All waters of the Atlantic Ocean in Key West, FL that are encompassed within the following points: starting at Point 1 in position 24°33.123'N, 81°49.290'W; thence northeast to Point 2 in position 24°33.545'N, 81°48.923'W; thence east to Point 3 in position 24°33.518'N, 81°48.902'W thence southwest to point 4 in position 24°33.095'N, 81°49.265'W thence west back to origin..

**(b) Definition.** As used in this section, the term “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West in the enforcement of the safety zone.



**(c) Regulations.**

(1) All non-participant persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the Captain of the Port Key West or their designated representative.

(2) All persons are prohibited from entering the water or swimming in the spectator area described in paragraph (a)(2) of this section.

(3) All vessels are prohibited from transiting at speeds that cause wake within the spectator area described in paragraph (a)(2) of this section.

(4) To seek permission to enter, contact the Captain of the Port Key West or a designated representative by telephone at (305) 433-0954, or via VHF radio on channel 16. If authorization is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative

(5) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives.

**(d) Enforcement Period.** This section will be enforced from 9:30 a.m. until 4:30 p.m. each day on November 10, 12, and 14, 2021.

Dated: September 29, 2021.

A. Chamie  
Captain, U.S. Coast Guard,  
Captain of the Port Key West.

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